

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERT LEMMO,

Plaintiff,

-against-

**DECLARATION OF PHILIP
S. FRANK**

08 CV 2641 (RJD)(LB)

DETECTIVE MICHAEL CERVINI, Badge #2426,
DETECTIVE EDWARD SPAGNUOLO, Badge #7179,
CITY OF NEW YORK,

Defendants.
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PHILIP S. FRANK, an attorney duly admitted to practice in the Courts of New York, declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following statements are true:

1. I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendants City of New York, Detective Michael Cervini, and Detective Edward Spagnuolo. As such, I am familiar with the facts and circumstances stated herein and submit this declaration to place the relevant documents in the record in support of Defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. In support of their motion, defendants submit the exhibits described below.

2. Annexed as Exhibit “A” is a copy of the Second Amended Complaint bearing docket number 08 CV 2641, and dated August 11, 2008. The Complaint, which was filed in the Eastern District of New York, alleges violations of plaintiff’s federal constitutional rights by the defendants named in the caption.

3. Annexed as Exhibit “B” is a court order dated July, 25, 2008, listed as Document #10 on the ECF docket for this case. This court order terminated the New York City Police Department as a defendant in this case, and replaced it with the City of New York.

4. Annexed as Exhibit “C” is a copy of the New York State Criminal History Information of the plaintiff, retrieved March 6, 2009. This document indicates plaintiff’s extensive experience with the criminal justice system prior to the events alleged in his complaint and is relevant to his claim of psychological injury.

5. Annexed as Exhibit “D” are relevant excerpts from a transcript of plaintiff’s deposition conducted on August 19, 2009, wherein plaintiff answered questions under oath regarding the allegations averred in the complaint as well as his purported damages as a result thereof.

6. Annexed as Exhibit “E” is a copy of the Tactical Plan for July 27, 2007, which sets forth the assignment that Detectives Cervini and Spagnuolo were on when they encountered plaintiff on that day.

7. Annexed as Exhibit “F” is a copy of the NYPD Arrest Report for Arrest ID Q07643029. The arrest report indicates the date and location of plaintiff’s arrest by Det. Cervini, the circumstances leading to the arrest, and the charges and reasons for the arrest.

8. Annexed as Exhibit “G” are relevant excerpts from a transcript of testimony of plaintiff in his criminal trial, The People of the State of New York v. Robert Lemmo, Indictment

No. 2035-07, Supreme Court of the State of New York, Queens County, dated September 8, 2008, in which he made statements under oath concerning his pursuit and arrest by defendants

9. Annexed as Exhibit "H" are relevant excerpts from a transcript of testimony of Det. Cervini in plaintiff's criminal trial, The People of the State of New York v. Robert Lemmo, Indictment No. 2035-07, Supreme Court of the State of New York, Queens County, dated September 8, 2008, in which he made statements under oath concerning his pursuit and arrest of plaintiff.

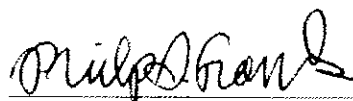
10. Annexed as Exhibit "I" is a copy of plaintiff's medical records dated July 27, 2007, from Elmhurst Hospital Center, where he was taken immediately after his arrest. The records indicate the extent of plaintiff's injuries following his arrest.

11. Annexed as Exhibit "J" is a copy of Certificate of Disposition in People v. Robert Lemmo, Case No. 02035-2007, Supreme Court of the State of New York, Queens County, indicating that on September 18, 2008 plaintiff was convicted of eight crimes stemming from his arrest by Det. Cervini on July 27, 2007.

Dated: New York, New York
November 19, 2010

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
City of New York, Detective Michael Cervini, and
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By:



Philip S. Frank
Assistant Corporation Counsel

To: Robert Lemmo (By Hand)
Plaintiff Pro Se
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Flushing, NY 11358

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Defendants.

**NOTICE OF MOTION, DEFENDANTS'
STATEMENT OF UNDISPUTED FACTS
PURSUANT TO RULE 56.1, DECLARATION
OF PHILIP S. FRANK IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT AND EXHIBITS**

MICHAEL A. CARDOZO
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Detective Michael Cervini, and
Detective Edward Spagnuolo
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Of Counsel: Philip S. Frank
Tel: (212) 788-0893
Matter No. 2008-025611

Due and timely service is hereby admitted.

New York, N.Y., 2010

Esq.

Attorney for